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COMMISSION ON CRIME PREVENTION
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REVIEW OF PRIORITY THEMES, IN ACCORDANCE WITH COMMISSION RESOLUTION 1/1 ON STRATEGIC MANAGEMENT BY THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE OF THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME

Status of preparations for the World Ministerial Conference on Organized Transnational Crime

Report of the Secretary-General

Addendum

Report on the meeting of the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held at Vienna, from 7 to 10 December 1993

The Secretary-General has the honour to submit to the Commission on Crime Prevention and Criminal Justice the report on the meeting of the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, held at Vienna from 7 to 10 December 1993 (see annex).

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Annex

REPORT ON THE MEETING OF THE AD HOC EXPERT GROUP ON MORE EFFECTIVE FORMS OF INTERNATIONAL COOPERATION AGAINST TRANSNATIONAL CRIME, INCLUDING ENVIRONMENTAL CRIME, HELD AT VIENNA FROM 7 TO 10 DECEMBER 1993

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RECOMMENDATIONS

The Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, recommended the following draft resolution for consideration by the Commission on Crime Prevention and Criminal Justice at its third session:

The Commission on Crime Prevention and Criminal Justice,

Recalling General Assembly resolution 45/121 of 14 December 1990, on the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which the Assembly welcomed the instruments and resolutions adopted by the Eighth Congress, including the resolution on the role of criminal law in the protection of nature and the environment,[1]

Recalling also General Assembly resolution 46/152 of 18 December 1991, in which the Assembly called for the strengthening of regional and international cooperation in combating transnational crime,

Recalling Economic and Social Council resolution 1993/28 of 27 July 1993, on the role of the criminal law in the protection of the environment, in which the Council took note of the conclusions, contained in the annex to that resolution, of the Seminar on the Policy of Criminal Law in the Protection of Nature and the Environment in a European Perspective, held at Lauchhammer, Germany, from 25 to 29 April 1992,

Recalling also Economic and Social Council resolution 1993/32 of 27 July 1993, on preparations for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in which the Council approved the provisional agenda for the Ninth Congress, including an item entitled "Action against national and transnational economic and organized crime, and the role of criminal law in the protection of the environment: national experiences and international cooperation", and endorsed the programme of work for the Ninth Congress, including the holding of six workshops, one of them on the topic "Environmental protection at the national and international levels: potentials and limits of criminal justice",

Recalling the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, in which the World Conference recognized, inter alia, that illicit dumping of toxic and dangerous substances and wastes potentially constituted a serious threat to the human rights to life and health of everyone,[2]

Noting with appreciation the work on the topic "Environmental protection at the national and international levels: potentials and limits of criminal justice" being undertaken by the United Nations Interregional Crime and Justice Research Institute, in view of the workshop on the same topic to be held at the Ninth Congress,

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[1] Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.2.

[2] A/CONF.157/23, sect. I, para. 11.

Noting the report of the International Law Commission on the work of its forty-third session, in particular the draft Code of Crimes against the Peace and Security of Mankind, article 26, on wilful and severe damage to the environment;[3] and the draft articles on state responsibility, in particular article 19, on international crimes and international delicts,[4]

Noting the recommendation of the colloquium of the International Association of Penal Law held at Ottawa, Canada, in November 1992, to be considered for adoption by the fifteenth International Congress on Penal Law, to be held at Rio de Janeiro, Brazil, in 1994,

Convinced that the environmental situation in developed, as well as developing, countries is the cause of increasingly serious concern about damage to the environment and its constituent elements, including water, soil, air, atmosphere, and the living species, including plants, animals and humans, and that it requires comprehensive and integrated approaches to the use of countermeasures at the national, regional and international levels,

Recommends that Member States should consider adopting the following measures concerning the role of criminal law in protecting the environment:

(a) Specific environmental legislation should be further developed on the basis of generally recognized principles, such as the "polluter pays" principle described in principle 16 and the "precautionary principle" described in principle 15 of the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development,[5] giving due and balanced consideration to the need to protect the environment in other parts of the law, and in the context of improving political and social conditions for a responsible environmental policy;

(b) National and supranational authorities should be provided with a wide array of measures, remedies and sanctions, within their constitutional and legal frameworks and consistent with the fundamental principles of criminal law, in order to ensure compliance with environmental protection laws. They should include regulatory and licensing powers, incentives, administrative enforcement mechanisms, and punitive administrative, civil and criminal sanctions for impairing or endangering the environment. They should also include provisions for the forfeiture of profits and proceeds of crime, and of property used or employed in the commission of crime, such as vessels, vehicles, tools, equipment and buildings;

(c) Environmental criminal law should be aimed at promoting all the important components of the environment, including human beings and other living species. It should be directed, in particular, to the regulation, control and, where necessary, the complete prohibition of hazardous activities, including the establishment and operation of hazardous installations, and the illegal import, export, movement and disposal of hazardous materials and wastes;

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[3]See Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10), paras. 60-176.

[4]Ibid., paras. 302-322.

[5]Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex I.

(d) Substantive environmental criminal law should formulate at least certain core criminal offences. These core offences, which could be autonomous and independent of environmental regulatory laws, should include deliberate, reckless or negligent assaults on the environment that cause or create imminent risks of serious damage, harm or injury. In addition, criminal sanctions should be extended to deliberate, reckless or negligent violations of administrative rules where there is a likelihood of serious harm or danger to the environment. In developing such criminal offences, the field guide contained in the annex to the report by the United Nations Interregional Crime and Justice Research Institute and the Australian Institute of Criminology entitled Environmental Crime, Sanctioning Strategies and Sustainable Development[6] should be taken into consideration;

(e) Subject to relevant international conventions, States should seriously consider enacting legislation prohibiting and sanctioning the export of products that have been banned from domestic use because of their deleterious impact on the environment and human health. Furthermore, Governments might consider the idea of banning the production and import of specific dangerous materials unless sufficient precautionary measures can be taken in respect of their use, treatment or disposal in their countries;

(f) Environmental crimes should cover intentional as well as reckless acts. When serious harm or actual danger of harm has been caused or created, however, negligent conduct should also be a crime if the persons responsible have significantly departed from the care and skill expected of them in the pursuit of their activities. In relatively minor cases, the imposition of fines, including administratively or judicially imposed non-criminal fines, and other non-custodial alternatives should be sufficient;

(g) Support should be given to the extension of the idea of imposing criminal or non-criminal fines or other measures on corporations in jurisdictions in which corporate criminal liability is not currently recognized in the legal systems;

(h) When using criminal law in environmental protection and creating new environmental crimes, consideration should be given to the need for law enforcement resources. Cooperation and coordination between criminal justice agencies and administrative agencies should be promoted, especially in jurisdictions where prosecutions are undertaken by criminal justice agencies. Furthermore, the judiciary should be sensitized to the seriousness of environmental offences and their consequences. Adequate staffing, special training and equipment should be provided to criminal justice agencies;

(i) In designing environmental law enforcement strategies, the legislator should consider in the framework of the constitution and the basic principles of the legal system, the rights of identifiable victims, victim assistance, facilitation of redress and monetary compensation, by removing legal barriers such as standing to sue, participation in proceedings and actions by citizens, including class action suits and citizen suits;

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[6]UNICRI 49.

(j) In accordance with the various provisions of Agenda 21,[7] adopted by the United Nations Conference on Environment and Development, such as those contained in chapters 8, 38, 39 of Agenda 21, collaboration with non-governmental organizations in efforts aimed at the prevention of environmental crimes and the effective redress of damage to health and the environment should be encouraged. Examples of such efforts are the ombudsman-like functions and alternative methods for resolving disputes currently being developed by the Earth Council, a non-governmental organization referred to in chapter 38 of Agenda 21;

(k) On the basis of proposals put forward by the International Law Commission and the discussions at the United Nations Conference on Environment and Development, Member States should consider acknowledging the most serious forms of environmental crimes in an international convention;

(l) States should be encouraged to contribute to the codification work of the International Law Commission, in particular in further refining the concept of international crimes and delicts in article 19 of the draft articles on state responsibility[4] and the concept of environmental crimes in article 26 of the draft Code of Crimes against the Peace and Security of Mankind;[3]

(m) Environmental offences should be framed in such a manner as to cover transboundary and transnational situations. On the one hand, the principle of ubiquity should be taken into consideration in the application of the principle of territoriality. On the other hand, the possibilities of prosecution of crimes of an extraterritorial nature might be extended by applying the principle of nationality, the principle of "extradite or prosecute" or, for example in cases of generally acknowledged international crimes, even the principle of universality;

(n) The use of legal instruments of international cooperation, such as those on extradition, mutual legal assistance and/or transfer of proceedings, should be supported and expanded. Environmental crimes of particular gravity or importance should become extraditable offences;

(o) In order to facilitate the prosecution of international crimes, in particular environmental crimes, States should consider the viability of establishing an international criminal court. Regional initiatives for the establishment of an international court for the prosecution of environmental crimes should be welcomed;

(p) States should consider, at least at the regional level, a minimum harmonization of environmental offences as a basis for international cooperation. In this respect, efforts to promote such harmonization, such as those of the Council of Europe and the Central American States, should be supported;

(q) International cooperation in the enforcement of environmental laws should be fostered by the provision of technical assistance bilaterally, multilaterally and through relevant international agencies, such as the Commission on Crime Prevention and Criminal Justice, the network of institutes of the United Nations crime prevention and criminal justice programme,

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[7] Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex II.

and similar regional institutes. Further research in this area, including the nature and extent of polluting activities, sanctioning strategies and the appropriate mix of measures in particular situations, should be encouraged.

I. BACKGROUND

1. The meeting of the Ad Hoc Expert Group on More Effective Forms of International Cooperation against Transnational Crime, including Environmental Crime, was held at Vienna from 7 to 10 December 1993. The meeting was attended by 17 experts nominated by the Governments of 14 countries selected on the basis of equitable geographical distribution, 2 expert observers and observers for 1 United Nations institute, 2 institutes affiliated with the United Nations and 1 non-governmental organization. The list of participants is contained in the appendix to the present report.

2. The meeting had before it the following documents:

(a) An annotated provisional agenda;

(b) Economic and Social Council resolution 1993/28, on the role of the criminal law in the protection of the environment, including the conclusions of the Seminar on the Policy of Criminal Law in the Protection of Nature and the Environment in a European Perspective, held at Lauchhammer, Germany, from 25 to 29 April 1992;

(c) A report entitled "Rounding up themes and issues", prepared by the United Nations Interregional Crime and Justice Research Institute and the Australian Institute of Criminology.

3. Benjamin P. Kubo, Solicitor-General of Kenya, chaired the meeting, and Mohan Prabhu, Senior Counsel in the Department of Justice of Canada, served as Rapporteur.

4. The General Assembly, in its resolution 45/121 of 14 December 1990, on the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, welcomed the instruments and resolutions adopted by the Eighth Congress,[1] including the resolution on the role of criminal law in the protection of nature and the environment.

5. The General Assembly, in its resolution 46/152, annex, of 18 December 1991, called for strengthening regional and international cooperation in combating transnational crime.

6. The Economic and Social Council, on the recommendation of the Commission on Crime Prevention and Criminal Justice, adopted resolution 1992/22 of 30 July 1992. In section VI of that resolution, the Council determined that one of the priority themes to guide the work of the Commission in the period 1992-1996 should be national and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment.

7. The Economic and Social Council, on the recommendation of the Commission, adopted resolution 1993/28 of 27 July 1993, on the role of criminal law and the protection of the environment. In that resolution, the Council requested the Secretary-General to consider the possibility of undertaking activities in the field of environmental crime in the United Nations crime prevention and criminal justice programme, in particular to include environmental crime as an issue for technical cooperation, and for that purpose, to establish, with input from Member States, a roster of experts from all regions in the field of environmental crime. It also called upon Member States and the bodies concerned to continue their efforts to protect nature and the environment using, in addition to measures provided by

administrative law and liability under civil law, measures in the field of national criminal law, and to provide requesting Member States with technical cooperation in the field of prevention and control of environmental crime.

8. The Economic and Social Council, on the recommendation of the Commission, adopted resolution 1993/32 of 27 July 1993. In that resolution, the Council approved the provisional agenda for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, including an item entitled "Action against national and transnational economic and organized crime, and the role of criminal law in the protection of the environment: national experiences and international cooperation". Also in that resolution, the Council endorsed the programme of work for the Ninth Congress, including the holding of six workshops, one of them on the topic "Environmental protection at the national and international levels: potentials and limits of criminal justice". In Economic and Social Council resolution 1993/243 of 27 July 1993, adopted on the recommendation of the Commission, the Council approved the provisional agenda for the third session of the Commission, including under item 3 the role of criminal law in the protection of the environment.

9. The United Nations Conference on Environment and Development, held at Rio de Janeiro, Brazil, from 3 to 14 June 1992, adopted Agenda 21, in which it stressed the importance of enforceable, effective laws. It stated that such laws, regulations and standards should be based on sound economic, social and environmental principles and appropriate risk assessment, incorporating sanctions designed to punish violations, obtain redress and deter future violations.[2]

II. OBJECTIVES OF THE MEETING

10. The objectives of the meeting were to produce recommendations for presentation to Member States, through the Commission on Crime Prevention and Criminal Justice and the Ninth Congress. In particular, the participants considered the following topics:

(a) Elements constituting an environmental crime that would be internationally recognized as such;

(b) Forms of environmental crime with a transnational character;

(c) Methods of international cooperation currently used to counter transnational environmental crime, and improvements that could be recommended to make international cooperation more effective;

(d) Approaches to furthering cooperation between jurisdictions with different legal models, including the execution of sanctions;

(e) Obstacles to the application and use of criminal law in protecting the environment, and approaches to overcoming them;

(f) Incorporation of environmental crime prevention into technical cooperation activities, and means by which that could be achieved.

11. With reference to Economic and Social Council resolution 1993/28, concerning the establishment of a roster of experts on environmental crime, the experts participating in the meeting were invited to provide the necessary details so that their names could be included on such a roster and to advise the Secretariat of the names and addresses of other national experts.

III. COUNTRY REPORTS

12. Experts from all participating countries and observers for the United Nations Interregional Crime and Justice Research Institute, the European Institute for Crime Prevention and Control, affiliated with the United Nations, and the International Centre for Criminal Law Reform and Criminal Justice Policy made presentations on relevant legislation and approaches to the role of criminal law in protecting the environment. A summary of those presentations is available from the Crime Prevention and Criminal Justice Branch upon request; it is hoped that, in view of their value, they could be presented in a publication.

13. Crime has no ideological boundaries, nor does it respect territorial boundaries or the state of development in particular jurisdictions. All participants identified environmental protection as an increasingly important area of concern for their countries. Environmental degradation was linked with a number of causes, including industrialization, deforestation, population growth, overcultivation and poverty, as well as intentionally or recklessly committed crimes, and acts of negligence.

14. A number of issues were of common concern to most participants. Many experts said that in their countries there were provisions relating to the environment scattered throughout a number of laws and regulations and administered by a number of authorities. It was noted that that tended to undermine the effectiveness of the laws and their enforcement. In some countries, the consolidation and rationalization of environmental protection legislation were taking place or being considered.

15. Enforcement presented a special problem since it often lacked coordination and resources and was not always a high priority. A number of measures were recommended to better coordinate enforcement action. Examples included the establishment of a designated prosecutor or prosecution department for all environmental offences, special police units and, in some cases, specialized courts to hear environmental cases. In countries composed of a number of states, it was also necessary to coordinate federal and state-based measures. Other ways to improve enforcement that were referred to included: the joint training of personnel; coordinated research and dissemination of findings; evaluation of enforcement programmes; collation of data; and improved liaison between relevant national, regional and interregional agencies.

16. It was noted that, in countries that had already introduced penal provisions into their environmental protection legislation, prosecutions had been steadily increasing in recent years. The importance of educating the public was emphasized, as it raised awareness and ensured comprehension of legal requirements.

17. There was considerable discussion concerning the respective roles of criminal, civil and administrative law in environmental protection. In many cases criminal law was used to reinforce compliance with administrative law, while in other cases there were independent criminal offences. A number of countries did not have any criminal sanctions for environmental offences.

18. The illegal importation and transit of hazardous waste were described as posing a particular problem for developing countries or countries in transition, in the absence of comprehensive enforcement or regulatory mechanisms, or information systems to monitor the waste. In some cases dangerous waste products were being imported under the guise of legitimate chemical imports, although they did not have clearance from the proper authorities. Efforts were being made to bring that situation under control by introducing more comprehensive legislation to regulate importation and by introducing sanctions for non-compliance. One expert said that his country would benefit from studying the legislation and enforcement mechanisms of other countries in that respect. The sale of low-level nuclear waste was noted as a problem in some countries, also in connection with transnational organized crime. In one country,

work was under way to counter the illegal disposal of hazardous waste by rigorous controls on the export of such waste by its nationals.

19. A number of countries were experiencing increasing difficulties with transnational crime, particularly drug trafficking and money-laundering. In many cases there appeared to be links between organized crime, economic crime and environmental offences. The importance of international cooperation in countering transnational crime, including crime against the environment, was highlighted; special emphasis was placed on extradition and mutual legal assistance in criminal matters. A number of regional initiatives were referred to, including efforts to harmonize national legislation through regional treaties.

IV. SUMMARY OF THE DISCUSSION

20. The participants discussed the topics below, which had been provided as objectives in the background and concept paper and included in the agenda.

A. Internationally recognized elements of environmental crime

21. The discussion of the topic "Internationally recognized elements of environmental crime" focused on the identification of the basic elements of environmental crime that would be internationally recognized as such.

22. It was suggested that an environmental crime should be viewed as having three components: (a) the mental element (mens rea), whether intentional, reckless or negligent; (b) the commission or omission (actus reus); and (c) the form of the crime. Concerning the mental element, it was noted by a number of experts that there seemed to be general agreement internationally that either intention or recklessness was required to constitute a crime. However, there was less international agreement on the extent to which negligence was criminal, unless it related to failure to comply with an administrative requirement that had penal sanctions attached to it.

23. Experts discussed the values that should be defended by criminal law, and whether the values applied to all or part of the ecosystem. In this context, a number of experts emphasized that harm or endangerment, whether in the long or short term, of environmental media such as water, soil and air, as well as endangered wildlife, should be prohibited.

24. It was suggested that the following categories of offences should be recognized by Member States and the United Nations: (a) offences with transboundary effects (or possible effects) on the world, such as greenhouse effects; (b) offences affecting countries other than the one in which they were committed; and (c) conduct that should be considered an offence in every country.

25. It was also suggested that besides considering the elements of an offence, also its transnational nature should be considered and related to harm to specific parts of the environment, whether actual harm or a risk thereof (concrete danger). The illegal disposal and importation or exportation of hazardous substances were cited as examples of transnational crimes, in contrast to commonly occurring national environmental offences, such as littering.

26. It was noted that examples of the objective characteristics of environmental crime might include: (a) failure to notify authorities of, for example, an oil spill or a nuclear accident; (b) failure to obtain a permit; (c) failure to clean industrial water before releasing it into a stream or lake; and (d) failure to build an industrial chimney of less than a prescribed height.

27. Reasonableness, foreseeability and necessity should be considered in determining whether offences are committed and there should be a balancing of interests between a clean environment and the need for industrial development. The public perception of environmental crimes being not really crimes, but lesser, "white-collar" offences, should be changed.

B. Forms of transnational environmental crime

28. With reference to principle 15 of the Rio Declaration on Environment and Development[3] (the "precautionary principle"), it was considered that the preventive aspect of environmental offences was useful. In that respect, offences could be grouped into three categories: (a) those affecting the global commons (res communis), such as the trade in endangered species, ozone depletion, climate change, dumping into oceans, and the pollution of international lakes and rivers; (b) those affecting other countries, for example, the trade in toxic wastes that is prohibited or controlled by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and by the Bamako Convention on the Ban of the Import of All Forms of Hazardous Wastes into Africa and the Control of Transboundary Movements of such Wastes Generated in Africa; and (c) methods of warfare damaging the environment of an enemy country, for example, in Kuwait in 1991, which, in the view of one observer, was environmental terrorism in wartime and was prohibited by the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international conflicts (Protocol I), adopted at Geneva on 8 June 1977.[4]

29. It was also suggested that transnational environmental crime should be linked to specific international conventions such as the Basel Convention. It was generally agreed, however, that acts that complied with environmental conventions but fell into one of the above categories such as emission of gases within the limits of the convention on ozone depletion, could not be seen as crimes.

30. The linkages between economic development and environmental crimes were fundamental issues that should be emphasized by reference to particular cases, namely the export of hazardous waste by large corporate entities from certain developed countries to developing countries. In one case, for example, the financial incentive was so great to a developing country that it had agreed to accept 15 million tonnes of such waste over five years at 40 United States dollars per tonne. The total sum was far in excess of its gross national product. It was only when that transaction became public knowledge that there was uproar and the contract was abandoned. That and similar cases raised grave concerns not only for the environment, but also for the lives and health of present and future generations. They involved several transnational crimes, including corruption of government officials, ecocide and genocide, all of which would have to be considered international crimes. It was suggested that there was a great need for a third party to identify such situations, which were not uncommon.

31. In this context, reference was made to the idea of a "legally sanctioned crime", that is, a crime that was not legally punishable and was still regarded as a "price of development". One example cited involved pesticides that were banned in some countries and exported to others for use in agricultural operations. Pesticide run-off contaminated drinking-water sources, causing serious illness in communities that were dependent on those water supplies.

32. In such cases, it was agreed that, subject to the relevant international conventions, Member States should consider enacting legislation prohibiting and introducing sanctions against the export of products that had been banned. It was also recommended that Member States should consider banning the production and importation of dangerous materials, unless sufficient precautionary measures could be taken in respect of their use, treatment or disposal.

C. Forms of international cooperation

33. It was noted that specific forms of currently existing international cooperation should first be identified at different levels of the administrative, civil and criminal justice systems, giving examples of cooperation at the administrative level, the police level (such as cooperation involving the International Criminal Police Organization (ICPO/Interpol)) and at the judicial level.

34. The Model Treaty on Extradition (General Assembly resolution 45/116, annex, of 14 December 1990), the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex, of 14 December 1990) and the Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution 45/118, annex, of 14 December 1990) were cited as means of international cooperation. Other examples included the bilateral and multilateral agreements and model instruments, including the European Convention on the Transfer of Proceedings in Criminal Matters, as well as other existing agreements on the reciprocal enforcement of judgements, mutual assistance in legal matters, rogatory commissions and reciprocal enforcement treaties on the summoning of witnesses. Another important example given was the administrative cooperation in cross-border investigation of crimes that currently existed between certain neighbouring countries in one region.

D. Approaches to furthering cooperation

35. Several proposals were made during the discussion on approaches to furthering cooperation, including (a) the lowering of prerequisites for mutual legal assistance for both criminal and administrative offences; (b) the facilitation of the gathering and use of evidence; (c) changes in the realm of corporate criminal liability where there were fundamental differences between countries with common law systems and those with civil law systems; (d) a commonly agreed list of environmental offences; (e) rogatory commissions whose jurisdiction could be expanded to include environmental crimes; and (f) the development of model national legislation, so that States could arrive at a common understanding of what constituted an environmental offence.

36. The theory of "ubiquity" was highlighted as an area of difficulty for transboundary crime. Common law countries required all elements of the crime to be present within one jurisdiction, which was often not the case. It was also explained that in common law jurisdictions it was possible for legislation to define crimes so as to avoid that limitation.

37. It was suggested that a database could be created by an international entity, such as the United Nations Environment Programme (UNEP) or the United Nations Interregional Crime and Justice Research Institute, on relevant national legislation and case law, as well as an international register of crimes and criminals, with names and photographs being provided by ICPO/Interpol. That might be useful, for example, in respect of the trade in endangered species.

38. In this and similar matters, cooperation with UNEP was essential. It was also recommended that the Crime Prevention and Criminal Justice Branch should do further work in researching and defining other forms of bilateral and multilateral cooperation and should make the results available to interested Member States.

E. Obstacles to the application and use of criminal law in protecting the environment and approaches to overcoming them

39. The mix of criminal law and administrative sanctions constituted an obstacle to the application and use of criminal law in protecting the environment. Administrative law could become an obstacle to the use of criminal law in many cases, especially if there was a close dependence of the latter on administrative decisions.

40. Lengthy delays, often as long as 10-15 years, were reported in some countries with respect to cases coming to final judgement. Prosecutions and trials should be expedited. Various schemes were being tried in several countries to reduce court delays to a minimum; such schemes included alternative dispute resolution, arbitration and the practices of "plea bargaining" and "transactions". It was noted that specially designated courts were not generally used in criminal matters. The judiciary in the ordinary courts of criminal jurisdiction would probably not support giving penal powers to specialized courts, and it might be inconsistent with constitutional law and fundamental rights in many countries. However, there was some merit to the idea of having specialized divisions of ordinary courts to adjudicate environmental crimes.

41. Another obstacle was the application of limitation periods to prosecutions, especially where a distinction was made between minor offences (misdemeanours, summary offences) and serious crimes (felonies, criminal offences). Minor offences could have very short limitation periods and, in some jurisdictions, even serious crimes had limitation periods.

42. Another obstacle was the lack or failure of inter-agency cooperation. Various agencies existed at the national level that often worked at cross purposes. It was suggested that administrative agencies should be involved not only at the enforcement stage, but also at the legislation preparation and regulation stages, in order to avoid some of the inconsistencies in the administrative and criminal law systems.

43. Other problems included lack of awareness of the environmental dangers of some products. In that area, courses could be given to criminal justice officials, including investigators, prosecutors and judges.

44. It was proposed that an obligation to repair the damage done to the environment should be included as a criminal sanction, as was done in a certain developed country. It was also suggested that the possibility of Member States allowing certain registered associations for the protection of nature and the environment to initiate proceedings under certain circumstances should be considered. After some discussion on the proper role of criminal law and the difficult civil liability questions that would come up in such penal proceedings and that criminal courts were not equipped to resolve, participants were generally of the view that the current system of independent civil actions for compensation should not be departed from.

F. Incorporation of environmental crime prevention in technical agreements and methods of achieving that objective

45. Economic development and environmental protection were closely intertwined, as illustrated by the export of environmental clean-up expertise or other expert knowledge.

46. Other examples of technical cooperation included education, training courses and technical assistance, as noted in a study by the United Nations Interregional Crime and Justice Research Institute and the Australian Institute of Criminology on sanctioning strategies and sustainable development.[5] In supporting those proposals, one expert called for the development of national training centres to ensure that countries would be able to control imported substances, as the dangerousness of such substances was often hidden by improper or fraudulent classification and description of products. Other experts urged United Nations entities to do their part to ensure that developing countries were not harmed.

47. The participants discussed the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/34, annex, of 29 November 1985), which included articles on victims of crime and abuse of power, restitution, compensation and access to justice. According to article 10 of the Declaration, in cases of substantial harm to the environment, wherever

such harm resulted in the dislocation of a community, restitution should include restoration of the environment. It was suggested that such a remedy should be established and strengthened, and the provision of funds for that purpose should be promoted, also with the assistance of the international community. However, some experts had difficulties with respect to the idea of empowering criminal courts to award compensation to victims because, if they were part of a system of criminal sanctions, the compensation awards would be regarded as additional punishment. Even in jurisdictions where such compensation provisions existed within the penal system, they were resorted to only where summary awards could be made by the courts.

48. Experts recommended that States should consider supporting the establishment of an international criminal court to prosecute international crimes, including environmental crimes. In this connection, States should support the work of the International Law Commission in further refining the concept of environmental crimes in the draft Code of Crimes against the Peace and Security of Mankind.[6] It was noted that there were non-governmental initiatives concerning the creation of an international criminal court for the protection of the environment, such as the proposal presented to the United Nations Conference on Environment and Development by the International Association of Environmental Lawyers, which would be discussed at a conference to be held at Venice in July 1994. A resolution to the same effect had also been adopted by the fourteenth International Congress on Penal Law, organized by the International Association of Penal Law. While there was general agreement about the merits of an international criminal court, some experts expressed reservations because of implementation difficulties. One expert suggested that the matter should be dealt with in tandem with national legislation.

49. Another dimension to be addressed was proper implementation of the recommendations contained in Agenda 21, which gave an important role to non-governmental agencies. The Earth Council, referred to in chapter 38 of Agenda 21,[3] was developing alternative mechanisms for resolving disputes in the area of redress of environmental harms (other than prosecutions) and could function as an ombudsman.

Notes

[1]Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. C.2.

[2]Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I and Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: Resolutions adopted by the Conference, resolution 1, annex II, chap. 8, sect. B.

[3]Ibid., annex I.

[4]United Nations, Treaty Series, vol. 1125, No. 175/2.

[5]Environmental Crime, Sanctioning Strategies and Sustainable Development (UNICRI 49).

[6]See Official Records of the General Assembly, Forty-eighth Session, Supplement No. 10 (A/48/10), chap. II.

Appendix

LIST OF PARTICIPANTS

Experts

Gilles Aubry, Chief Commissioner, Deputy Chief of the 6th Division of Criminal Affairs, France

Rodrigo G. Barahona, Doctor in Law, University of Costa Rica

Valquiria Souza Teixeira De Andrade, Police Officer, Brazil

C. R. de Silva, Deputy Solicitor General, Attorney-General's Department, Attorney at Law of the Supreme Court, Sri Lanka

Miles Flint, Deputy Assistant Attorney-General, Environment and Natural Resources Division, Department of Justice, United States of America

Vinod Kumar Jain, Special Secretary, Internal Security and Police, Ministry of Home Affairs, India

Arkadiy Yakovich Kitesov, Deputy Head, Department on Fight against Organized Crime, Ministry of Interior, Ukraine

Benjamin P. Kubo, Solicitor-General, Attorney General's Chambers, Kenya

Joaquén Martin Canivell, Magistrate in Penal Law, Supreme Court of Spain

Manfred Moehrenschlager, Minister Counsellor, Federal Ministry of Justice, Germany

Wessel Mulder, First Secretary, Permanent Mission of South Africa to the United Nations Office at Vienna

José Marcos Nogueira Viana, Alternate Permanent Representative, Permanent Mission of Brazil to the United Nations Office at Vienna

Mohan Prabhu, Senior Counsel, International Environmental Law, Department of Justice, Canada

Sergei K. Prodan, First Secretary, Permanent Mission of Ukraine to the International Organizations in Vienna

Mohamed Sanghare, Technical Adviser, Ministry of the Environment and the Protection of Nature, Senegal

Françoise Travaillot, Magistrate, Office of International Penal Law and International Cooperation and Assistance, Department of European and International Affairs, Ministry of Justice, France

Tran Van Thanh, General Department of Vietnam Police, Viet Nam

Observers

Christopher Horne, Tutor, Loughborough University, England

Sarah Louise Zyhlarz-Shaw, University of Vancouver, Canada

United Nations bodies and affiliated institutes

United Nations Interregional Crime and Justice Research Institute

European Institute for Crime Prevention and Control, affiliated with the United Nations

International Centre for Criminal Law Reform and Criminal Justice Policy

International Scientific and Professional Advisory Council

Non-governmental organizations

International Association of Penal Law